REMARKS/ARGUMENTS

Claims 1-36 and new claim 37 are pending in the application. Reconsideration is requested in view of the above amendments and the following remarks.

New claim 37 has been added to more particularly recite an embodiment of the present invention, and to further distinguish the invention over the cited art. No new matter has been introduced, and this claim is supported by the specification. (See Applicant's published specification, par. [0029].) Claim 37 is discussed below.

The priority claim has been rejected pursuant to section 112. The Examiner contends that the Applicant's earlier disclosure, now US Patent 6,763,467, does not support the present disclosure, in particular the instant messaging feature of the current invention. However, Applicant respectfully disagrees, and, for the reasons set forth below, shows that there is support for the present invention and the priority date claimed.

As to the 112 rejection, a review of the disclosure of the Applicant's priority document, namely, US Patent 6,763,467 provides support for the present invention. The disclosure in the current application is supported in the priority document, and therefore for this reason the priority claims is proper. In addition, the Office Action further confirms the support for the Applicant's priority document by citing a reference (namely Tso), which is applied by the USPTO as a basis for rendering Applicant's disclosure obvious, while, at the same time, this reference does not even itself disclose what the Office Action claims the Applicant's priority document does not support. Therefore, it is an inconsistent application by the USPTO to apply the Tso reference as containing a disclosure which is sufficient to make Applicant's invention obvious (which Applicant

contends it does not), and at the same time have the Office Action contend that

Applicant's prior disclosure is not supported.

First, Applicant's priority disclosure provides support for the current invention.

Applicant's disclosure in the `467 patent states that transport connections provided data

to the NTI. The NTI is utilized on a single computer. Therefore, instant messaging

which would need to pass through the transport connections would be intercepted by the

NTI. Applicant's disclosure would certainly be understood to provide this by one of

ordinary skill in the art.

Applicant further describes the invention by stating that:

> Within the computer system 33 reside the transport layer 34 of the
> operating system, the network traffic interceptor ("NTI") 40, and one
> or more user applications 37.
>
> The transport connections 32 transport the data stream from the
> network 31 to the transport layer 34 housed within the computer
> system 33.
> (US Patent 6,763,467 at col. 4, lines 29-34)

Applicant further goes on to state that "[t]he transport layer provides reliability

through data flow control and error recovery methods." (US Patent 6,763,467 at col. 4,

lines 40-42)

Applicant even refers to messages, stating that the transport layer "conforms the

incoming message into properly sized packets and re-conforms them in the proper order

at their destination." (US Patent 6,763,467 at col. 4, lines 42-44)

Applicant submits that based on the Applicant's disclosure, that one of ordinary

skill in the art would understand the disclosure may use the novel NTI to intercept instant

messages traveling through the user's computer, as the NTI is for use on a single

computer, and transport connections are where the messages would travel. It would follow that the instant messages would be handled by the invention.

In paragraph 8 of the Applicant's current specification, Applicant describes how instant messaging protocols operate. Applicant further discusses in the application specification intercepting and examining peer to peer code and/or instant messaging. This is consistent with the prior disclosure and reference to the network transport interceptor (NTI), and the "incoming message" referred to by Applicant's prior specification (to which priority is claimed) (see above).

For these reasons, the present disclosure and invention are fully supported by the Applicant's priority document, and the section 112 rejection should be withdrawn.

Second, Applicant's priority claim indeed is proper for additional reasons. Applicant's priority claim relates to the subject matter that the Office Action discusses in relation to the references. If Applicant's priority claim with respect to instant messaging is not deemed to meet 112, then the Tso reference, to the same extent that it fails to mention instant messaging, cannot render Applicant's present invention obvious. If the position of the USPTO is that Applicant's earlier disclosure, which mentions a protocol parser, a protocol scanner, a proscribed code scanner and "messages" is deemed insufficient to support the Applicant's priority claim, then certainly, the Tso reference relied on by the Office Action rejection, which does not even mention instant messaging, or streaming communications channel, cannot be said to provide a teaching or disclosure that would render the Applicant's present invention obvious. Accordingly, the very citation of Tso by the USPTO is an admission that the Applicant, in its priority

application, has indeed disclosed the support for its present invention, and, accordingly, the Applicant's priority claim is proper.

For the above reasons, Applicant's priority claim is proper and supported, and reconsideration and a withdrawal of the section 112 rejection is respectfully requested.

Claims 1-17 stand rejected over 35 USC 101, as not reciting statutory subject matter. This rejection is respectfully but strenuously traversed and reconsideration and a withdrawal of the rejection is hereby respectfully requested.

Applicant submits that the claims define appropriate subject matter. However, to more particularly articulate the invention, Applicant has amended each of the independent claims to recite "an apparatus for processing code comprising: <u>at least one</u> <u>electronic device component for intercepting, examining and controlling code, said</u> <u>electronic device being provided with</u> . . ." The amendment is supported by the specification, and no new matter has been introduced. (See Applicant's published specification, pars. [0024] and [0033].)

For these reasons, the invention recited in the claims now defines statutory subject matter and the 101 rejection should be withdrawn. Reconsideration is requested.

The remaining rejections in the case rely on Tso and Moore (in combination with each other, or with each other and one or more additional references). For the reasons set forth above Applicant has traversed the section 112 rejection, and Applicant's priority claim antedates Moore and Tso, and therefore, the remaining rejections are moot, and as such, should be withdrawn.

Claims 1-4, 6-8, 10, 11, 18-19, 21-25, 34 and 36 stand rejected under 35 U.S.C. 103(a) as being unpatentable over US Patent 6,088,803 ("Tso") in view of US Patent

application 2002/0163934 ("Moore"). This rejection is respectfully but strenuously traversed and reconsideration and a withdrawal of the rejection is hereby respectfully requested.

The Applicant's invention is not disclosed or suggested by the cited references and should be patentable. The Examiner contends that Tso discloses a method and apparatus including a protocol parser, a protocol scanner, and a proscribed code scanner including a scanning means and an indicator whereby the protocol parser intercepts instant messaging or peer-to-peer code on a communications channel and transmits said code to said proscribed code scanner through said protocol scanner (referring to col. 6, lines 10-24 of Tso and contending that the parser performs the functions of both the protocol parser and the protocol scanner). Tso fails to teach, disclose or suggest the Applicant's present invention, alone or when combined with Moore as proposed in the Office Action.

Previously, the Examiner, on pages 6-7 of the May 13, 2005 Office Action appears to acknowledge distinctions made by Applicant, but considers the claim language to not include the specific description referenced to by Applicant. Applicant previously amended each of the independent claims in order to recite that the protocol parser discriminates among different protocols.

Applicant's claims also recite that the protocol parser accepts instant messaging or peer-to-peer code on a communications channel and transmits or transfers the code... (See claims 1-17). Claims 18-36 also recite intercepting instant messaging or peer-to-peer code on a communications channel.

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Applicant previously pointed out that reliance on Tso was misplaced, because

what Tso actually describes is as follows:

> As illustrated in FIG. 5, transcoding server 34 may include a transcoder 20 with a parser 22 and a plurality of transcode service providers 24. Parser 22 is configured to act upon data received by transcoder 20, such as a request for a network object generated by client device 12 or a reply to such a request provided by a content server or other device on network 18. In this particular example, parser 22 is responsible for selectively invoking one or more of transcode service providers 24 based upon a predetermined selection criterion. With reference to FIG. 1 and FIG. 4, virus checker 5 may be implemented, for example, as a transcoding service provider 24. Persons skilled in the art will recognize, however, that the functionality of transcoding service provider 24 may also be implemented in a router, a networking stack, or any other suitable network device.

According to Tso's disclosure, the parser manages the transcoding of data to be

transmitted from transcoding service provider.

Applicant's invention is distinguishable, in that the present invention recites:

> An apparatus for processing code comprising: at least one electronic device component for intercepting, examining and controlling code, said electronic device component being provided with a protocol parser *capable of discriminating among different protocols implemented on top of the transport layer*; and, a proscribed code scanner; whereby said protocol parser intercepts instant messaging or peer-to-peer code on a communications channel and transmits said code for review by said proscribed code scanner, said protocol parser being provided to parse protocols on top the transport layer.

Applicant previously pointed out that Applicant's claims refer to a

communications channel, whereas Tso refers to a server/network communications link

16. Applicant also noted that it is one thing to intercept the stream as the Applicant's

invention claims and does, but another thing to transcode content based on a

predetermined selection criterion (see Tso col. 6 lines 42-43). In particular, Tso merely

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discloses a parser for use in connection with HTTP. One would not gain from Tso's

HTTP disclosure to implement a protocol parser in the first place. Again, that only

comes from Applicant's current and priority disclosures (and not the cited art). Tso does

not mention using a parser to parse protocols on top of the transport layer, as Applicant

discloses and claims. For these reasons alone, even the further attempt to combine Moore

with Tso still does not teach or disclose Applicant's.

Now the rejection includes a secondary reference, namely, Moore. The rejection

now contends that it would have been obvious to combine Moore with Tso in order to

arrive at the Applicant's present invention.

Applicant responds to the rejection of Tso and the additional reference of Moore.

For the reasons set forth in Applicant's prior response and the reasons set forth herein, the

cited references still do not teach or disclose the Applicant's present invention.

Applicant previously pointed out distinctions between the Tso reference and

Applicant's claimed invention. In particular, Applicant's invention relates to and claims

interception of instant messaging on a communications channel. The protocol parser

according to the Applicant's present invention is placed so as to intercept code passing

through a communications channel. The intercepted code is then sent by the parser to a

protocol scanner. In addition, Applicant's invention provides that it may operate by

using a protocol parser that may be placed on a client, server, a peer, and/or other system

components. (See specification [0024].) Tso, on the other hand, discloses a transcoding

server 34 which is intermediate between the network client 12 and the network 18. Tso

appears to relate to downloading of files, whereas Applicant's invention recites handling

a communications stream on a communications channel.

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As Applicant previously pointed out, it is one thing to intercept the stream as the Applicant's invention claims and does, but another thing to transcode content based on a predetermined selection criterion (see Tso col. 6 lines 42-43). In particular, Tso merely discloses a parser for use in connection with HTTP. Tso does not mention using a parser to parse protocols on top of the transport layer, as Applicant discloses and claims.

The current Office Action therefore cites to and relies on the additional reference, namely, Moore, for its alleged teaching of a protocol parser that discriminates between different protocols implemented at the application layer, which the Office Action considers to be at a layer on top of the transport layer, citing to pars. [0046] and [0055] of Moore.

However, considering what Moore discloses, and the combination proposed in the current Office Action, the Applicant's present invention is not taught, suggested or disclosed. The portions of Moore cited and relied on in the Office Action rejection read as follows:

> [0046] For example, a protocol-specific parser in accordance with the present invention can convert protocol-specific data at any network level into a common language. The common language can be used to describe network layer communications including, for example: Ethernet, Token Ring, TCP/IP, IPX/SPX, AppleTalk.TM., IPv6, and other network layer protocols. The common language also can be used to describe application layer communications including, for example: SMTP, HTTP, TELNET, FTP, POP3, RIP, RPC, Lotus Notes.TM., TDS, TNS, IRC, DNS, SMB, RIP, NFS, DHCP, NNTP, instant messengers (AOL IM.TM., MSN, YAHOO.TM.) and other application layer protocols. The common language can also be used to describe the content of communications including, for example: E-Mail messages, PGP, S/MIME, V-Card, HTML, images, and other content types.

> *   *   *

> [0055] As shown in FIG. 2, directed sessions 114 generally conform to disparate protocols. For example, in the embodiment illustrated in FIG. 2,

six sessions having different protocols are shown. The six protocols are FTP, Telnet, HTTP, MS Instant Messaging, NNTP, and SMTP. It would be apparent to those skilled in the art that the illustrated protocols are by way of example only. Any set of protocols could be represented. *Each directed session output by parser director 112 is input to a protocol-specific parser configured to process the protocol associated with that session. For example, as illustrated in FIG. 2, FTP session 114a is input to an FTP-specific parser 116a. Telnet session 114b is input to Telnet-specific parser 116b. HTTP session 114c is input to HTTP-specific parser 116c. MS Instant Messaging session 114d is input to MS Instant Messaging-specific parser 116d.* NNTP session 114e is input to NNTP-specific parser 116e. SMTP session 114f is input to SMTP-specific parser 116f.

Considering Moore, there is a disclosure of not a parser, but rather, a number of protocol-specific parsers. Applicant claims:

> An apparatus for processing code comprising: at least one electronic device component for intercepting, examining and controlling code, said electronic device component being provided with *a protocol parser capable of discriminating among different protocols implemented on top of the transport layer*; and, a proscribed code scanner; whereby said protocol parser intercepts instant messaging or peer-to-peer code on a communications channel and transmits said code for review by said proscribed code scanner, said protocol parser being provided to parse protocols on top the transport layer.

Moore, on the other hand, does not appear to disclose the Applicant's claimed invention, but rather, discloses directed sessions conforming to disparate protocols. Therefore, a number of protocol specific parsers are employed.

The Office Action seeks to combine Moore with Tso. However, Tso is cited for allegedly disclosing a parser that performs the functions of the protocol parser. The Office Action acknowledges that Tso fails to disclose a protocol parser that is capable of discriminating among different protocols implemented on top of the transport layer. But Moore, which is relied on to fill the Tso deficiency, discloses not a discriminating protocol parser, but a number of protocol parsers. Moore merely provides that a protocol

specific analyzer will not be needed for every protocol because it attempts to provide a common language. This is not what Tso relates to, nor would there be motivation to combine Moore with Tso.

Tso is cited for its disclosure of a parser and transcode service. That very disclosure in Tso relates to an http remote proxy.

Moreover, the reference in Tso at col. 5, lines 27-43, relied on in the rejection of Applicant's claims 8, 10 and 24, is to a different embodiment. At that citation in Tso, the parser 22, has not even been mentioned. For the Office Action to assert that the portion of Tso, at col. 5, lines 27-43, would relate to a parser configuration means for configuring interception parameters, does not provide a disclosure or suggestion of the Applicant's present invention.

For the above reasons, the present invention is not disclosed or suggested by the cited references.

Claim 9 stands rejected under 35 USC 103(a) as being unpatentable under the modified Tso et al. reference and Moore et al. system as applied above, and further in view of U.S. Patent Application 2003/0083977 ("Syed"). This rejection is respectfully but strenuously traversed and reconsideration and a withdrawal of the rejection are hereby respectfully requested.

Applicant's invention is distinguishable over the cited references. The Examiner contends that modified Tso et al. and Moore et al. disclose an apparatus for processing code comprising a protocol parser capable of discriminating among different protocols implemented on top of the transport layer, (citing to Tso and Moore as previously discussed) and a proscribed code scanner, whereby said protocol parser intercepts

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messaging code on a communications channel and transmits said code for review by said proscribed code scanner and said protocol parser being provided to parse protocols on top of transport layer. The Examiner further contends that Tso and Moore disclose intercepting codes that are commonly passed over the internet.

However, the Office Action admits that Tso and Moore, even if combined together, still fail to disclose that messaging code is short messaging code. The Examiner, however, attempts to fill this deficiency by combining a further reference, namely Syed, and alleges that Syed's mention of short messages (SMS) over the internet, as disclosed in paragraph [0015] of Syed, would be obvious to combine with Tso and Moore, even though Tso and Moore fail to mention short messaging code. Applicant's invention, as recited in claim 9, is not obvious in view of the cited references.

First, for the reasons set forth above Tso and Moore, fail to disclose or suggest the Applicant's present invention.

Second, in addition, Syed relates to a system and method for providing electronic bulk buying. Syed discusses a method and system for point of sale and purchase of data content where broadcast content involves advertisements and multimedia data content. The reference to short messages appears unrelated to Tso and Moore and does not supply any reason or motivation to modify Tso and Moore in the manner suggested in the Office Action. Again, there is no reference in Syed to taking a communications stream and intercepting it in the manner provided by the Applicant's present invention.

For the above reasons, and these additional reasons, claim 9, is not obvious in view of the cited references. Reconsideration and a withdrawal of the rejection with respect to claim 9 is respectfully requested.

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Claims 5, 12, 15-17, 20, 26-29, 32-33, and 35 stand rejected under 35 USC 103(a) as being unpatentable over modified Tso et al. and Moore et al. as applied to claims 1 and 18 above and further in view of U.S. Patent 5,682,428 ("Johnson"). This rejection is respectfully but strenuously traversed and reconsideration and a withdrawal of the rejection are hereby respectfully requested.

The Examiner acknowledges that even the combination of Tso et al. and Moore et al. would still fail to meet the Applicant's present invention in that these references fail to disclose decrypting the code. The Examiner therefore applies an additional reference, namely Johnson, which the Office Action considers to disclose decrypting data (citing to col. 27, lines 23-56). The Examiner considers that it would have been obvious to use Johnson's method of decryption in the modified Tso et al. and Moore et al. system of code scanning and the motivation would have been to be able to reference and manipulate previously encrypted data.

First, for the same reasons as those set forth above, Applicant submits that the rejection of the claims with the further reference of Johnson still fails to teach, suggest or disclose the Applicant's present invention.

Second, Johnson does not disclose as Applicant's claim 12 calls for, a decryption component that receives code that is transferred from the protocol parser that intercepts instant messaging or peer-to-peer code being transmitted through a communications channel. Claim 12 also recites that the code is transferred to the decryption component for decryption and scanning by the proscribed code scanner. Johnson, even if combined with Tso and Moore, still does not teach, suggest or disclose decrypting with a decryption component instant messaging or peer-to-peer code that is being communicated through a

communications channel. Reference to the Johnson citation discloses files, rather than a communications stream. Johnson does not mention a communications stream, but rather seeks to utilize a file identification code to decrypt a file. For these additional reasons, the cited references fail to teach, suggest or disclose the Applicant's claimed invention. Again, with respect to the other claims rejected over the combination that includes Johnson, those claims also relate to instant messaging or peer-to-peer code, and are not taught or disclosed by the cited references.

For the same reasons, the Applicant's invention should also be patentable over the combination of Tso and Johnson, and even with the further combination of Elgamal.

For these reasons, reconsideration and a withdrawal of the rejection is respectfully requested.

Claims 13-14 and 30-31 stand rejected under 35 U.S.C. 103(a) as being obvious over the modified US Patent 6,088,803 ("Tso"), Moore, Johnson, as applied to claims 12 and 26, and the further reference of US Patent 6,389,534 ("Elgamel"). This rejection is respectfully but strenuously traversed and reconsideration and a withdrawal of the rejection is hereby respectfully requested.

The Examiner acknowledges in the Office Action that the Tso, Moore and Johnson references all fail to disclose S/MIME and SSL encryption. The Examiner then relies on the further reference of Elgamel for its alleged teaching of the use of these encryption techniques.

For the same reasons set forth above, Applicant submits that Elgamel does not disclose using encryption in a communications stream which is intercepted.

NEW CLAIM 37:

New claim 37 more particularly recites the feature of the present invention wherein communication between client and server in a communications stream utilizes a secure feature. The SSL is implemented by the parser, as the claim recites. Applicant submits that even the combination including Elgamel, still fails to disclose or suggest the invention as recited in new claim 37.

For the above reasons, Applicant's invention is distinguishable over the cited prior art and should be patentable.

The Double Patenting Rejections:

Claims 1-8, 10-12, 15-29 and 32-36 stand rejected on the ground of nonstatutory obviousness-type double patenting as being unpatentable over claims 1-15 of U.S. 7,389,540. in view of Moore, et al. This rejection is respectfully but strenuously traversed and reconsideration and a withdrawal of the rejection is hereby respectfully requested.

For the above reasons, Applicant submits that Moore fails to disclose the present invention, and therefore, the rejection should be traversed. In the event that the double patenting rejection is the last rejection remaining, and is not traversed, Applicant will consider filing a terminal disclaimer.

Claim 9 stands rejected on the ground of nonstatutory obviousness-type double patenting as being unpatentable over claims 1-15 of U.S. 7,389,540 in view of Moore, et al. and further in view of Syed. This rejection is respectfully but strenuously traversed and reconsideration and a withdrawal of the rejection is hereby respectfully requested.

For the above reasons, Applicant submits that Moore and Syed fail to disclose or suggest the present invention, and therefore, the rejection should be traversed. In the event that the double patenting rejection is the last rejection remaining, and is not traversed, Applicant will consider filing a terminal disclaimer.

Claims 13, 14, 30 and 31 stand rejected on the ground of nonstatutory obviousness-type double patenting as being unpatentable over claims 1-15 of U.S. 7,389,540 in view of Moore, et al. in further view of Elgamal. This rejection is respectfully but strenuously traversed and reconsideration and a withdrawal of the rejection is hereby respectfully requested.

For the above reasons, Applicant submits that Moore and Elgamel fail to disclose or suggest the present invention, and therefore, the rejection should be traversed. In the event that the double patenting rejection is the last rejection remaining, and is not traversed, Applicant will consider filing a terminal disclaimer.

Claims 1 – 8 and 10-36 stand rejected on the ground of nonstatutory obviousness-type double patenting as being unpatentable over claims 1-16 of U.S. 7,404,212 in view of Moore, et al. This rejection is respectfully but strenuously traversed and reconsideration and a withdrawal of the rejection is hereby respectfully requested.

For the above reasons, Applicant submits that Moore fails to disclose the present invention, and therefore, the rejection should be traversed. In the event that the double

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patenting rejection is the last rejection remaining, and is not traversed, Applicant will consider filing a terminal disclaimer.

Claim 9 stands rejected on the ground of nonstatutory obviousness-type double patenting as being unpatentable over claims 1-16 of U.S. 7,404,212 in view of Moore, et al. and further in view of Syed. This rejection is respectfully but strenuously traversed and reconsideration and a withdrawal of the rejection is hereby respectfully requested.
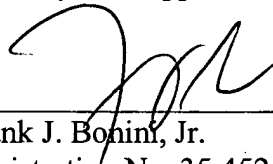
For the above reasons, Applicant submits that Moore and Syed fail to disclose or suggest the present invention, and therefore, the rejection should be traversed. In the event that the double patenting rejection is the last rejection remaining, and is not traversed, Applicant will consider filing a terminal disclaimer.

For the above reasons, Applicant's invention is distinguishable over the cited prior art and should be patentable.

If an extension of time is required, the Commissioner is requested to consider this a request for a petition for the appropriate extension of time.

The Commissioner is authorized to charge any additional fees which may be required to Patent Office Deposit Account No. 05-0208.

Respectfully submitted,
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